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December 12, 1997

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: **Comments of the Telecommunications Industry Association, CC
Docket No. 97-213**

Dear Ms. Salas:

Enclosed for filing are an original and nine copies of the Telecommunications Industry Association's comments in the above-captioned matter. Also enclosed is an additional copy which we ask that you please date stamp and return with our messenger.

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,



Thomas M. Barba
*Counsel for the Telecommunications
Industry Association*

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

DEC 12 1997

In the Matter of:

**Communications Assistance for Law
Enforcement Act**

CC Docket No. 97-213

**COMMENTS OF THE TELECOMMUNICATIONS INDUSTRY
ASSOCIATION**

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December 12, 1997

SUMMARY

The Telecommunications Industry Association ("TIA") fully supports the goals established in the Communications Assistance for Law Enforcement Act of 1994 ("CALEA"). TIA offers several suggestions that it believes will allow the Commission to implement CALEA in a manner that minimizes the statute's competitive impact on U.S. telecommunications equipment manufacturers and carriers.

First, the Commission should adopt a narrow reading of the entities subject to CALEA's Section 103 functional requirements. The statute limits these compliance obligations to telecommunications carriers. Congress clearly intended its definition of "telecommunications carrier" to be synonymous with "common carrier." The Commission should not extend this definition to cover entities other than common carriers.

Second, the Commission should not adopt CALEA technical compliance standards at this time. TIA, working with other industry representatives, has achieved consensus on a standard. The Commission correctly interprets its role under Section 107 of CALEA as the appropriate standard setting agency only in the absence of a private sector solution. TIA does, however, ask the Commission to clarify certain aspects of CALEA's "safe harbor" provisions during this implementation process.

Third, in considering petitions from carriers and others as to what is "reasonably achievable," the Commission should give particular weight to the statutory factors that add to the cost and complexity for carriers and users of the network to comply with CALEA. The Commission should also consider comparisons to the law

enforcement requirements imposed by other countries on their carriers. The Commission should not consider as a factor the amount of appropriated funds available to compensate carriers when determining whether a carrier's compliance is "reasonably achievable." Finally, the Commission should explicitly state that telecommunications equipment manufacturers or their trade associations may file "reasonably achievable" petitions and otherwise participate in these proceedings.

Fourth, rather than exercising its authority to extend the CALEA deadline beyond October 25, 1998 on an ad hoc basis, the Commission should grant a blanket extension to all telecommunications carriers and manufacturers until October 24, 2000. The 1998 CALEA compliance deadline is virtually unachievable since the consensus industry standard was just announced and will require at least 30 months for manufacturers to implement. The Commission can expect thousands of petitions to this effect raising the same legal and practical arguments. To conserve administrative resources, the Commission should instead issue a blanket extension of the compliance date.

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²⁹ Communications Assistance for Law Enforcement Act, Pub. L. 103-414, 108 Stat. 4279 (1994), codified at 47 USC § 1001 et seq.

manner that limits costs to the telecommunications industry, the federal and state governments and the consuming public without jeopardizing CALEA's law enforcement goals. The FCC should minimize the competitive effect of CALEA on U.S. telecommunications equipment manufacturers and carriers by ensuring predictability and consistency of CALEA obligations.

I. THE COMMISSION SHOULD LIMIT CALEA'S SCOPE TO WIRE AND RADIO COMMON CARRIERS CONSISTENT WITH CONGRESSIONAL INTENT

The Commission should adopt a narrow reading of the scope of CALEA's coverage, limiting its applicability to communications common carriers. The clear language of the statute and its legislative history indicate that Congress intended that the term "telecommunications carrier" be viewed as synonymous with common carrier. This narrow reading of the law also lends certainty as to the types of entities that must comply with CALEA.

Congress clearly limited the reach of CALEA's Section 103 functional requirements to telecommunications carriers, and meant the term to be synonymous with the provision of common carrier services. Section 102(8) defines a "telecommunications carrier" as "a person or entity engaged in the transmission of wire or electronic communications as a common carrier for hire..."^{4/} The remainder of the statutory definition elaborates on what constitutes a common carrier, but does not expand the definition in any way or attempt to broaden the category of covered entities.

The legislative history also supports a narrow reading of CALEA's intended coverage. The House Judiciary Committee explained that "the only entities

^{4/} 47 U.S.C. § 1001.

required to comply with the functional requirements are telecommunications common carriers, the components of the public switched network where law enforcement agencies have served most of their surveillance orders."^{5/} Then, in elaborating on the statutory definition of "telecommunications carrier," the House Judiciary Committee first limited its coverage to common carriers, then listed several examples of common carriers, and then concluded that the definition would cover "any other common carrier that offers wireline or wireless service for hire to the public."^{6/} This clear guidance supports the most narrow interpretation of what constitutes a "telecommunications carrier" subject to CALEA's functional requirements.

While the Commission is correct that the 1996 amendments to the Communications Act of 1934 cannot be read to amend or supersede CALEA's definition of "telecommunications carrier,"^{7/} these recent amendments provide further evidence in support of a narrow reading of entities covered by CALEA. Section 153 of the Communications Act defines a telecommunications carrier as a provider of telecommunications services. It then defines "telecommunications service" as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used."^{8/} The Communications Act further explains that a "telecommunications carrier" is treated as a common carrier only to the extent it is offering telecommunications

^{5/} H.R. Rep. No. 103-827, at 18 (1994) ("House Judiciary Report").

^{6/} Id. at 20.

^{7/} Notice at ¶ 14.

^{8/} 47 U.S.C. § 153(46). The Communications Act defines "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 153(43).

services.^{9/} TIA believes that there are no inconsistencies in the definition of "telecommunications carrier" for application of CALEA and general purposes, but that the 1996 definition of "telecommunications carrier" supports TIA's belief that only wireline and wireless common carriers are intended for coverage under Section 103 of CALEA.

In this context, TIA fully supports the Commission's tentative conclusions that private mobile radio service ("PMRS") providers and information providers are not common carriers subject to CALEA. TIA is, however, concerned that the Commission seems willing to extend the definition of covered entities beyond common carriers. In particular, TIA questions the need to seek comment on a definition of a telecommunications carrier as "any entity that holds itself out to serve the public indiscriminately in the provision of any telecommunications service."^{10/} This definition goes beyond both the CALEA definition and the 1996 Telecommunications Act amendments.

TIA is also concerned that the Commission seems to read Section 102(8)(b)(ii) of CALEA as possibly extending the statute's reach beyond common carriers. The Commission tentatively concludes it has the discretion to reclassify as a telecommunications carrier any person or entity providing service that is a replacement for a substantial portion of local exchange service.^{11/} Under this broad reading of the statute, the Commission could, for example, conceivably draw into CALEA's coverage a PMRS provider. TIA believes that Congress did not intend to expand the scope of

^{9/} 47 U.S.C. § 153(44).

^{10/} Notice at ¶ 16.

^{11/} Notice at ¶ 18.

CALEA to incorporate more than common carriers. Rather, Section 102 merely sets out examples of what constitutes "a common carrier for hire."^{12/}

In this regard, TIA urges the Commission to take an expansive view of its Section 102(8)(c)(ii) authority to exempt by rule classes or categories of telecommunications carriers.^{13/} In specific instances, exemptions will allow emerging technologies to develop even in the absence of CALEA conformance. These exemptions would be entirely consistent with congressional findings that new services should not be kept from the marketplace simply because they are not able to meet previously-established CALEA requirements.^{14/}

II. THE COMMISSION NEED NOT ADOPT CALEA TECHNICAL COMPLIANCE STANDARDS AT THIS TIME

Congress concluded that the private sector, in cooperation with law enforcement agencies, should have the primary responsibility for developing CALEA technical compliance standards. Telecommunications carriers implementing these standards would fall within the "safe harbor" of CALEA enforcement. As the Commission correctly notes, the private sector is currently developing these technical standards. Therefore, in accordance with Section 107 of CALEA, it would be premature for the Commission to adopt any technical standards.

^{12/} Under the expansive reading of CALEA's scope suggested by the Commission, TIA is concerned that an ad hoc approach to determine entities covered by CALEA could place certain non-common carrier entities in violation of the statute only after a later finding by the Commission. The Commission should work to avoid this untenable result by carefully circumscribing CALEA's reach with a firm definition.

^{13/} 47 U.S.C. § 1001.

^{14/} House Judiciary Report at 19.

Congress provided the Commission with only a limited role in establishing technical compliance standards. The private sector-- in the form of trade associations, standard-setting organizations, and users of telecommunications equipment -- has the initial task of working with law enforcement agencies to establish the assistance capability requirements of Section 103 of CALEA.^{15/} Telecommunications carriers and equipment manufacturers will be deemed to meet their CALEA obligations if they are in compliance with any publicly available technical requirements or standards adopted by an industry association or standard setting organization.^{16/} The Commission may establish technical standards or requirements in only two instances: (1) if the industry fails to issue technical requirements or standards; or (2) if a government agency or person petitions the Commission claiming that the industry-established standards are deficient.^{17/} Based upon this limited delegation of authority, the Notice correctly recognizes that the adoption of any technical standards for assistance capability compliance by the Commission would be premature. "Based on the ongoing nature of the standard-setting process, we conclude that it would be inappropriate at this time for us to address technical capability standards issues."^{18/}

Since the issuance of the Commission's Notice, the industry has achieved consensus on a standard. TIA is pleased to announce that on November 20, 1997, the proposed industry standard was adopted as an interim/trial use standard and has been published as J-STD-025.^{19/} The standard has also been forwarded to the American

^{15/} 47 U.S.C. § 1006.

^{16/} 47 U.S.C. § 1006(a)(2).

^{17/} 47 U.S.C. § 1006(b).

^{18/} Notice at ¶ 44.

^{19/} TIA has attached the press release announcing the publication and excerpts from the interim/trial

National Standards Institute's Board of Standards Review ("BSR"). The BSR has been asked to determine whether, despite negative comments by law enforcement agencies, the standard can be promulgated as a final American National standard.

With these ongoing industry efforts, the Commission is correct in taking no action. TIA does ask, however, that the Commission clarify certain aspects of Section 107's safe harbor provisions. For example, is a telecommunications carrier or manufacturer who meets the interim industry standard subject to liability under CALEA during the period the interim standard remains in place? If the industry standard is ultimately rejected by the Commission in accordance with Section 107(b)'s petition procedures, will the carrier or manufacturer be subject to liability under CALEA for the period during which the standard was under challenge? If the Commission changes a standard as a result of a petition, how much time will the Commission allow for compliance with the new standard?^{20/}

III. THE COMMISSION SHOULD GIVE CONSIDERABLE WEIGHT TO THE ECONOMIC FACTORS CONTAINED IN A "REASONABLY ACHIEVABLE" PETITION

Section 109 of CALEA provides a means for telecommunications carriers to receive compensation for their compliance with CALEA standards if such compliance is not "reasonably achievable." Carriers and others may seek compensation from the

use standard to this pleading. The complete version of J-STD-025 is available to FCC staff from TIA upon request.

^{20/} Section 107(b)(5) of CALEA requires a "reasonable" time for the transition to a new standard and a clear definition of carriers' standards during the transition period. As discussed in Section IV below, TIA would recommend at least 24 months.

government for costs incurred after January 1, 1995 by petitioning the Commission, who will then consider these requests in light of eleven statutory factors.^{21/}

TIA strongly urges the Commission to clarify that equipment manufacturers or their trade associations are permitted to file such petitions. Manufacturers have the greatest understanding of what is "reasonably achievable" and can assist carriers, particularly smaller ones, in obtaining fair compensation for CALEA compliance. Equipment manufacturers also have an interest in ensuring that carriers are compensated for this compliance since Section 106 of CALEA requires that manufacturers cooperate with carriers and share technology necessary to comply with CALEA obligations. As a manufacturer's costs of compliance must be incorporated in its sale price to carriers, it is only appropriate that manufacturers be permitted to play a role in the petition process. TIA asks the Commission to clarify that manufacturers or their trade associations can take such a role in the Section 109 petitioning process.

The Commission has also sought comment on the eleven statutory factors enumerated in Section 109 for consideration in "reasonably achievable" petitions. In particular, the Commission has sought comment on the weight it should give to these eleven factors as well as what other factors it might consider.^{22/} TIA urges the Commission to give significant weight to those factors that add to the difficulty or the expense imposed on the carrier or users of the network. This emphasis is entirely consistent with Section 109's goal of compensating private industry for complying with CALEA. An additional factor for Commission consideration is whether a cost incurred

^{21/} 47 U.S.C. § 1008.

^{22/} Notice at ¶ 45. The factors are set forth at 47 U.S.C. § 1008(b)(1) (A)-(K).

by a U.S. carrier to comply with CALEA is similar to that imposed by foreign governments for law enforcement assistance. If U.S. requirements are far more costly, U.S. companies would be placed at a competitive disadvantage if they are not compensated by the Federal government.

Finally, TIA believes that the Commission's review of these petitions should not consider whether funds are available to the Federal government to compensate industry. The focus of a "reasonably achievable" claim must be on the burden placed on the telecommunications carrier, not whether the Justice Department is willing or able to provide such compensation.

IV. THE COMMISSION SHOULD ISSUE A BLANKET EXTENSION OF THE OCTOBER 1998 CALEA COMPLIANCE DEADLINE

Section 107(c) of CALEA permits the Commission to consider petitions to extend the CALEA compliance deadline for existing telecommunications carriers from October 25, 1998 to not later than October 24, 2000.^{23/} Rather than considering these petitions on an ad hoc basis, the Commission should grant a blanket extension to all telecommunications carriers until October 24, 2000.

The existing CALEA compliance schedule is virtually unachievable. Standard industry practice requires 24-30 months of development before manufacturers can even release a software package containing new features. Accordingly, even though the private sector has started to develop the hardware and software necessary to implement the recently published standard, the features to satisfy that standard could

^{23/} 47 U.S.C. § 1006(c).

not be finished in development and released until, at the earliest, December 1999.

Moreover, carriers would require additional time to deploy these new features into a "first field market" for testing and then eventually to their entire market.

To date, government and industry have been unable to agree on what capabilities are required by CALEA. Because there was no standard to which to build, manufacturers had no assurance that their very costly development efforts would be found to be in compliance with the statute. Without an industry standard, therefore, manufacturers were hesitant to allocate too many resources to the development process (and face the potential of wasting millions of dollars in designing and testing equipment that does not satisfy their obligations under CALEA). Even now that an industry standard has been published, law enforcement has publicly stated that the standard is "deficient" in its view, implying that law enforcement may challenge the standard at the FCC -- creating additional uncertainty for industry. Because the development process alone requires at least 24 months, compliance with the capability requirements under Section 103 clearly is not "reasonably achievable" by October 25, 1998.

As a result, most telecommunication carriers are planning to file petitions with the Commission seeking extensions of the October 25, 1998 deadline. This could easily result in hundreds or thousands of individual petitions from wireline and wireless carriers, each presenting disparate factual issues, but all making the same basic legal arguments. Rather than handling these petitions on an individual, ad hoc basis, however, the Commission should issue, on an expedited basis, an extension of the

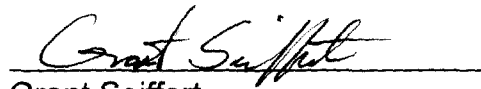
compliance date to October 24, 2000.^{24/} In addition, the Commission should consider a rule granting manufacturers at least 24 months, from the date of promulgation, to design and develop the equipment and software necessary to comply with any capability standard the Commission may promulgate in the future.

V. CONCLUSION

TIA generally supports the Commissions' proposals to implement CALEA. TIA asks, however, that the Commission adopt the changes suggested herein to permit telecommunications manufacturers and carriers to implement this statute in the most cost effective manner.

Respectfully submitted,

Telecommunications Industry Association



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^{24/} Because the FBI capacity regulations have not yet been promulgated, an extension of the October 1998 deadline would not seriously affect law enforcement's current ability to conduct wiretaps. CALEA provides three years for the implementation of these capacity regulations. 47 U.S.C. § 1003(b)(1). Thus, even if the FBI promulgates its regulation in January, law enforcement will not have the capacity to conduct more than the number of wiretaps they are already able to conduct until, at the earliest, January 2001.

ATTACHMENTS

NEWS RELEASE



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FOR IMMEDIATE RELEASE
December 5, 1997

TIA AND ATIS PUBLISH LAWFULLY AUTHORIZED ELECTRONIC SURVEILLANCE INDUSTRY STANDARD

Arlington, VA.-- The Telecommunications Industry Association and Committee T1, sponsored by the Alliance for Telecommunications Industry Solutions (ATIS), have jointly published interim standard/trial use standard J-STD-025, *Lawfully Authorized Electronic Surveillance*.

The purpose of this industry standard is to facilitate a telecommunication service provider's compliance with the assistance capability requirements defined in Section 103 of the Communications Assistance for Law Enforcement Act (CALEA) of 1994. An industry ballot unanimously approved this document as fulfilling the requirements called for under CALEA.

J-STD-025 defines the services and features to support lawfully authorized electronic surveillance and the interfaces to deliver intercepted communications and call-identifying information to a law enforcement agency when authorized.

Compliance with J-STD-025 satisfies the "safe harbor" provisions of Section 107 of CALEA and helps ensure efficient and industry-wide implementation of the assistance capability requirements.

The U.S. Congress, under CALEA, encouraged industry standards-setting bodies to establish standards to meet the lawfully authorized surveillance capabilities required by CALEA. Work began in early 1995 to develop a standard in TIA's engineering committee TR-45.2, Cellular Inter-System Operations, in conjunction with Committee T1. TIA's standards-setting

-more-



process invites participation of all interested parties, and industry participants as well as government representatives made technical contributions to be considered for text in the standard.

The formulating group, made up of industry representatives, unanimously approved J-STD-025 for publication as a joint TIA interim standard/Committee T1 trial use standard. By definition, an interim standard contains information deemed to be of technical value to the industry and must be reviewed on an annual basis with consideration to proceed to develop an American National Standard on the subject.

To obtain a copy of J-STD-025, contact Global Engineering Documents at (800) 854-7179 or at <http://global.ihs.com>.

###

TIA is a full-service national trade organization with membership of 650 large and small companies which provide communications and information technology products, materials, systems, distribution services and professional services in the United States and countries around the world. TIA represents the telecommunications industry in association with the Electronic Industries Association.

Nearly 2,500 experts from 500 companies participate in ATIS committees, whose work ranges from developing United States network interconnection standards to operating guidelines for network testing. The FCC frequently refers operations issues to ATIS committees for recommended solutions. ATIS membership is open to North American and World Zone 1 Caribbean providers of telecommunications services as well as providers engaged in the resale of those services; all manufacturers of telecommunications equipment and developers of telecommunications software for such equipment used for the provision of telecommunications services and all providers of enhanced services.

EDITORS: Please note that information regarding TIA and ATIS is available via the associations' respective World Wide Web site at <http://www.tiaonline.org> and <http://www.atis.org>.



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J-STD-025

INTERIM STANDARD (TRIAL USE STANDARD)

Lawfully Authorized Electronic Surveillance

J-STD-025

DECEMBER 1997

Jointly Developed by:



In Association with the



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INTERIM STANDARDS

Interim Standards (Trial Use Standards) contain information deemed to be of technical value to the industry, and are published at the request of the originating Committee without necessarily following the rigorous public review and resolution of comments which is a procedural part of the development of a American National Standard.

Under TIA Engineering Manual, Interim Standards should be reviewed on an annual basis by the formulating Committee and a decision made on whether to proceed to develop a American National Standard on this subject. Interim Standards must be cancelled by the Committee and removed from the Standards Catalog before the end of their third year of existence.

Publication of this Interim Standard for trial use and comment has been approved by the Telecommunications Industry Association. Distribution of this Interim Standard for comment shall not continue beyond 36 months from the date of publication. It is expected that following this 36-month period, this Interim Standard, revised as necessary, will be submitted to the American National Standards Institute for approval as an American National Standard. Suggestions for revision should be directed to: Standards Secretariat, Standards & Technology Department, Telecommunications Industry Association, 2500 Wilson Boulevard, Arlington, VA 22201.

Standards and Publications are adopted in accordance with the American National Standards Institute (ANSI) patent policy. By such action, TIA or ATIS does not assume any liability to any patent owner, nor does it assume any obligation whatever to parties adopting the Standard or Publication.

(From Project No. 4116, formulated under the cognizance of the TIA TR-45.2 and Committee T1.)

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NOTICE FROM THE DEVELOPERS

This Interim/Trial Use Standard has been approved by the Telecommunications Industry Association (TIA) Engineering Committee and the Alliance for Telecommunications Industry Solutions (ATIS) sponsored Committee T1 – Telecommunications for trial use, comment and criticism, and been published in order to obtain those comments that will occur as a result of its use. When sufficient time has elapsed for trial use of the Interim/Trial Use Standard and subsequent receipt of comments (three years from date of publication), the Interim/Trial Use Standard will be amended as needed, and a revised text will be submitted for approval as an American National Standard.

Users are therefore urged to consider carefully the guidelines in this Interim/Trial Use Standard and to submit comments to the Standards Secretariat of TIA at the following address: 2500 Wilson Boulevard, Suite 300, Arlington, VA 22201-3438; Telephone: 703/907-7700; Fax: 703/907/7727.

This document is being published by Global Engineering on behalf of TIA and ANSI on behalf of ATIS and Committee T1. This Interim/Trial Use Standard was coordinated between ATIS' Committee T1 and TIA.

A Word from TIA:

TIA/EIA Engineering Standards and Publications are designed to serve the public interest through eliminating misunderstandings between manufacturers and purchasers, facilitating interchangeability and improvement of products, and assisting the purchaser in selecting and obtaining with minimum delay the proper product for his/her particular need. Existence of such Standards and Publications shall not be in any respect preclude any member or nonmember of TIA/EIA from manufacturing or selling products not conforming to such Standards and Publications, nor shall the existence of such Standards and Publications preclude their voluntary use by those other than TIA/EIA members, whether the standard is to be used either domestically or internationally.

A Word from ATIS Committee T1:

Established in February 1984, Committee T1 develops technical standards and reports regarding interconnection and interoperability of telecommunications networks at interfaces with end-user systems, carriers, information and enhanced-service providers, and customer premises equipment (CPE). Committee T1 is sponsored by ATIS and is accredited by ANSI.

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NOTICE FROM PATENT HOLDERS

The user's attention is called to the possibility that compliance with this standard may require use of an invention covered by patent rights.

By publication of this standard, no position is taken with respect to the validity of this claim or of any patent rights in connection therewith. The patent holder has, however, filed a statement of willingness to grant a license under these rights on reasonable and nondiscriminatory terms and conditions to applicants desiring to obtain a license. Details may be obtained from the Telecommunications Industry Association or the American National Standards Institute.

Abstract

This Interim Standard defines the interfaces between a telecommunication service provider (TSP) and a Law Enforcement Agency (LEA) to assist the LEA in conducting lawfully authorized electronic surveillance. A TSP, manufacturer, or support service provider that is in compliance with this Interim Standard will have a "safe harbor" under Section 107 of the Communications Assistance for Law Enforcement Act (CALEA), Public Law 103-414: "a [TSP] shall be found to be in compliance with the assistance capability requirements under [CALEA] Section 103, and a manufacturer of telecommunication transmission or switching equipment or a provider of telecommunication support services shall be found in compliance with [CALEA] Section 106."

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